

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

## MULTICARE HEALTH SYSTEM,

Plaintiff,

V

## WASHINGTON STATE NURSES ASSOCIATION,

Defendant.

CASE NO. C16-5053BHS

ORDER GRANTING IN PART  
AND DENYING IN PART THE  
PARTIES' MOTIONS FOR  
SUMMARY JUDGMENT AND  
AFFIRMING IN PART AND  
VACATING IN PART  
ARBITRATION DECISION

This matter comes before the Court on Defendant Washington State Nurses Association’s (“WSNA”) motion for summary judgment to confirm award (Dkt. 15) and Plaintiff MultiCare Health System’s (“MultiCare”) motion for summary judgment to vacate award (Dkt. 29). The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file and hereby rules as follows:

## I. PROCEDURAL HISTORY

On January 21, 2016, MultiCare filed a complaint against WSNA seeking to vacate an arbitrator's decision and award. Dkt. 1 ("Comp.").

1 On May 12, 2016, WSNA filed a motion for summary judgment to confirm the  
2 decision. Dkt. 15. On May 31, 2016, MultiCare responded. Dkt. 23. On June 6, 2016,  
3 WSNA replied. Dkt. 26.

4 On June 16, 2016, MultiCare filed a motion for summary judgment to vacate the  
5 decision. Dkt. 29. On July 5, 2016, WSNA responded. Dkt. 31. On July 8, 2016,  
6 MultiCare replied. Dkt. 32.

7 On September 14, 2016, the Court requested additional briefing on certain issues.  
8 Dkt. 33. On September 30, 2016, both parties filed supplemental opening briefs. Dkts.  
9 34, 35. On October 7, 2016, both parties filed supplemental response briefs. Dkts. 36,  
10 37.

## 11 II. FACTUAL BACKGROUND

12 In October 2010, WSNA filed a complaint against MultiCare asserting that  
13 Registered Nurses (“RNs”) at Tacoma General Hospital (“TGH”) were not properly  
14 compensated for missed rest breaks. Comp. at ¶ 9. In late 2012, the Washington  
15 Supreme Court held that, under certain circumstances, RNs must be compensated at time  
16 and a half for missed breaks. *Washington State Nurses Ass’n v. Sacred Heart Med. Ctr.*,  
17 175 Wn.2d 822 (2012). The court also held that the hospital’s violation of Washington’s  
18 Minimum Wage Act did not require interpretation of the parties’ Collective Bargaining  
19 Agreement. *Id.* at 833.

20 Sometime after the *Sacred Heart* decision, WSNA and MultiCare engaged in  
21 settlement discussions. On September 12, 2013, the parties entered into a settlement  
22

1 agreement. *Id.*, Exh. B (“Settlement”). The agreement provides in relevant part as  
2 follows:

3 Managers of each department or unit of Tacoma General Hospital  
4 and Good Samaritan Hospital will adopt mechanisms, practices or policies  
5 that assure each Represented Nurse is relieved of patient care duties for a  
6 15-minute rest period every four hours of work. In no case shall the  
7 mechanism used result in a violation of the staffing plan established by the  
8 Nurse Staffing committee. Represented Nurses will work cooperatively to  
9 implement whatever mechanisms are used in each department or unit.  
10 Except in exigent circumstances, RNs will accept a rest break when relief is  
11 provided and, in the RN’s judgment, patient needs will be met and is  
12 consistent with the Nurse Practice Act.

13 *Id.* at 1(a)(1).

14 MultiCare and WSNA also entered into a Collective Bargaining Agreement  
15 (“CBA”) effective June 2013 through December 2015. Dkt. 1, Exh. A. Relevant to this  
16 matter, the CBA provides that “[a]ll nurses shall be allowed a paid rest period of fifteen  
17 (15) minutes for each four (4) hours of working time.” *Id.* § 8.5.

18 On April 11, 2014, WSNA filed the grievance underlying this matter. Dkt. 3 at  
19 82. The grievance states that the nature of the grievance was rest/meal breaks and the  
20 cited paragraph of the Settlement. *Id.* The parties were unable to resolve the issue, and  
21 WSNA requested arbitration under Article 14.3 of the CBA. *Id.* The Arbitrator held  
22 hearings in phases and issued a final decision on December 28, 2015. *Id.*, Exh. F  
23 (“Award”). The Arbitrator defined the issue as follows:

24 Did the employer violate the settlement agreement by failing to  
25 adopt and provide mechanisms, practices or policies procedures that would  
26 give the opportunity and means for the represented nurses to take their rest  
27 breaks as provided for in the agreement? If so, what is the appropriate  
28 remedy?

1 *Id.* at 2.

2 With regard to the liability portion of the parties' dispute, MultiCare appears to  
3 concede that this Court cannot disturb the arbitrator's finding that MultiCare failed to  
4 implement an adequate system for rest breaks. The system at issue is referred to as the  
5 "buddy system" and essentially requires a separate on-duty nurse to cover the needs of  
6 the patients assigned to the nurse who is on break. Thus, the buddy nurse will assume the  
7 obligations of the breaking nurse. The evidence shows that this system as implemented  
8 does not provide the required rest breaks as contemplated by the Settlement. For  
9 example, the Arbitrator found as follows:

10 The employer argues that the buddy system is an acceptable way for  
11 nurses to receive their rest breaks. Apparently, the employer is satisfied  
12 with a hospital-wide 13% missed breaks and considers this number to  
equate to a rare occurrence with the required monetary penalty of overtime  
pay.

13 *Id.* at 30. Moreover, "[t]he majority of missed breaks (88.76%) occurred in either the  
14 Emergency Department (60.59%) or the Birth Center (28.17%)." *Id.* at 20. MultiCare  
15 contends that these facts are inaccurate. Dkt. 35 at 11 n.7. MultiCare cites evidence in  
16 the record establishing that the Emergency Department does not use the buddy system  
17 and cites the Arbitrator's own finding that "[i]n 27 units other than the ED, Birth Center,  
18 and MedSurg ICU, nurses receive 93.1% of the rest breaks." *Id.* at 12 (citing Award at  
19 23). Regardless, MultiCare fails to meaningfully challenge the Arbitrator's decision on  
20 liability.

21 MultiCare, however, challenges the Arbitrator's remedies. In addition to  
22 sustaining the grievance, the Arbitrator directed as follows:

1           2. In order to assure that each nurse receives the rest breaks  
2           established by the Settlement Agreement, the hospital shall, no later than  
3           the pay period nearest to January 15, 2016, cease from using the buddy  
4           system as a means to provide rest breaks.

5           3. When determining future schedules, each unit or department, for  
6           each shift, shall staff, schedule, and assign a nurse to serve as a reserve or  
7           float nurse with the precise assignment of relieving other scheduled nurses  
8           for their authorized breaks. Such schedules shall be effective no later than  
9           the pay period nearest to January 15, 2016.

10          4. The staffing committee, or a sub-committee comprised of an equal  
11         number of represented nurses and nurse management, shall, within 30 days  
12         of the date of this decision, convene to discuss and determine a mutually  
13         acceptable process to resolve the issue(s) raised herein regarding  
14         compliance with the Settlement Agreement. Any process or method shall  
15         not violate or change the established staffing plan as it relates to the ratio of  
16         nurse to patient. The committee shall meet as frequently as necessary to  
17         reach a decision.

18          5. In the event the staffing committee or sub-committee fails to  
19         arrive at a mutually acceptable solution to the issue(s) by June 30, 2016, the  
20         parties will each submit their last, best position to the undersigned, with  
21         their rationale in support of their position, either in writing or by  
22         presentation in a hearing. The undersigned shall choose one of the two  
23         positions, without modification. Such choice shall be final and binding on  
24         the parties. Costs of this process will be shared equally.

25          6. The undersigned shall retain jurisdiction to resolve any dispute  
26         arising from the implementation of this Decision and Award.

27          *Id.* at 33.

### 16           **III. DISCUSSION**

#### 17          **A. Summary Judgment Standard**

18          Summary judgment is proper only if the pleadings, the discovery and disclosure  
19         materials on file, and any affidavits show that there is no genuine issue as to any material  
20         fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).  
21          In this case, the facts are undisputed and the parties request only a determination whether  
22         the Award should be affirmed or vacated as a matter of law.

## **B. Standard of Review**

“It is well-settled that federal labor policy favors the resolution of disputes through arbitration; thus, judicial scrutiny of an arbitrator’s decision is extremely limited.” *S. Cal. Gas Co. v. Utility Workers Union of Am., Local 132, AFL-CIO*, 265 F.3d 787, 792 (9th Cir. 2001). Under § 301 of the Labor Management Relations Act, an arbitration award is subject to vacatur only in a “narrow” set of circumstances:

(1) when the award does not draw its essence from the collective bargaining agreement and the arbitrator is dispensing his own brand of industrial justice; (2) where the arbitrator exceeds the boundaries of the issues submitted to him; (3) when the award is contrary to public policy; or (4) when the award is procured by fraud.

*Id.* at 792–93.

## C. Essence of the Parties' Agreements

In this case, MultiCare argues that the Award does not draw its essence from the parties' CBA because it prescribes a remedy that violates the Settlement. Dkt. 29 at 3–4. Although “an arbitrator’s remedy also deserves deference, . . . [it] must still draw its essence from, and is therefore limited by, the collective bargaining agreement.” *Phoenix Newspapers, Inc. v. Phoenix Mailers Union Local 752, Int’l Bhd. of Teamsters*, 989 F.2d 1077, 1081–82 (9th Cir. 1993) (citing *United Paperworkers Int’l Union v. Misco, Inc.*, 484 U.S. 29, 38, 41 (1987)). An arbitrator’s solution should “be rationally derived from some plausible theory of the general framework or intent of the agreement.” *Id.* (citing *Desert Palace, Inc. v. Local Joint Executive Bd.*, 679 F.2d 789, 793 (9th Cir. 1982)). “The rational relationship between the remedy and the agreement must be ‘viewed in

1 light of [the agreement's] language, its content, and any other indicia of the parties'  
2 intention.”” *Id.* (quoting *Desert Palace*, 679 F.2d at 792).

3       “The words in such an agreement must be understood in the context of the history  
4 of the negotiations which gave rise to their inclusion.” *Syufy Enterprises v. N. California*  
5 *State Ass’n of IATSE Locals*, 631 F.2d 124, 126 (9th Cir. 1980). “[E]vidence of prior  
6 negotiations is essential to ascertain the rights and obligations of the parties under the  
7 current contract.” *George A. Hormel & Co. v. United Food & Commercial Workers,*  
8 *Local 9, AFL-CIO*, 879 F.2d 347, 352 (8th Cir. 1989). Moreover, “there is a strong  
9 policy not to impose by judicial implication a right that was purposely deleted during the  
10 bargaining process.” *Id.* (citing *Carbon Fuel Co. v. United Mine Workers*, 444 U.S. 212,  
11 221–22 (1979)). Thus, courts have vacated remedies that an arbitrator has imposed when  
12 the particular remedy was explicitly rejected by a party during prior negotiations. *See,*  
13 *e.g., Phoenix Newspapers*, 989 F.2d at 1082 (vacating arbitrator’s award when employer  
14 rejected same remedy in prior collective bargaining agreement negotiations); *George A.*  
15 *Hormel*, 879 F.2d at 352 (vacating award for numerous reasons, including the fact that  
16 “the right granted by the arbitrator’s decision is, essentially, one expressly rejected during  
17 an earlier collective bargaining process.”).

18       In this case, MultiCare argues that the Arbitrator included two remedies that were  
19 specifically rejected during prior negotiations. First, the Arbitrator concluded that  
20 MultiCare must eliminate the break buddy system. Award at 33. The Arbitrator,  
21 however, found in relevant part as follows:

1           MultiCare's unwavering position during the negotiations for the  
2 terms of the Settlement Agreement was to continue to be able to use the  
3 buddy system for purposes of providing rest breaks. Although not  
4 specifically written or referenced as part of the final agreement, the  
5 inclusion of "mechanisms, practices or policies" was the concession that  
6 would allow for the employer to maintain and continue the application of  
7 this system. Equally resolute in it's [sic] stance, the WSNA insisted that the  
8 buddy system not be a part of the Settlement. As expressly described it was  
9 not included.

10           Award at 28. According to the Arbitrator's own findings, MultiCare explicitly rejected  
11 any discontinuation of the buddy system. Thus, under binding law, this remedy does not  
12 draw its essence from the CBA because it was explicitly rejected during negotiations of  
13 the Settlement. *Phoenix Newspapers*, 989 F.2d at 1082. As such, the parties created a  
14 catch-22 situation: MultiCare refuses to discontinue use of a break system that violates  
15 the parties' contract, but the Arbitrator is precluded from imposing a remedy that was  
16 explicitly rejected during negotiations of the same contract. Regardless of this obvious  
17 conundrum, the Court is bound to enforce the binding precedent and vacate the  
18 Arbitrator's award as to the preclusion of "using the buddy system as a means to provide  
19 rest breaks." Award at 33.

20           WSNA contends that the award is an interpretation of the contract language  
21 instead of a precluded remedy. Dkt. 34 at 8–16. The Court disagrees. The Arbitrator  
22 interpreted paragraph 1(a)(1) of the Settlement to mean that MultiCare must adopt  
23 "mechanisms, practices or procedures that *assure* each represented nurse is relieved of  
24 patient care duties for a 15 minute break for every four hours worked." Award at 28  
25 (emphasis added). If a break is not assured by the employer, then the employer violates  
26 the agreement. The Arbitrator concluded that, when using the buddy system, "the time

1 away from work is not really a break.” Award at 30. Thus, precluding use of the buddy  
2 system is a remedy for such violations. While the Court agrees with WNSA that an  
3 Arbitrator has wide discretion in fashioning a remedy, there are simply some things he  
4 may not do such as force a remedy upon a party that it explicitly declined to agree to  
5 during contract negotiations. *Phoenix Newspapers*, 989 F.2d at 1082.

6 The Arbitrator, however, may fashion both compensatory and prospective  
7 remedies. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 987 (9th Cir. 2001), *opinion*  
8 *amended on denial of reh’g*, 275 F.3d 1187 (9th Cir. 2001) (“The Supreme Court has  
9 held that an arbitrator should be given substantial latitude in fashioning a remedy under a  
10 CBA.”). For example, it would seem that an appropriate compensatory remedy could be  
11 overtime compensation for each buddy break that was taken throughout the hospital  
12 because the Arbitrator found that the breaking nurse did not truly receive a break.  
13 MultiCare promised to adopt practices and procedures to assure a true break and,  
14 according to the Arbitrator, it willfully failed to uphold that promise by the continued use  
15 of the buddy system. Compensation for missed breaks was within the fair contemplation  
16 of the parties during negotiations as MultiCare even concedes that it “has already  
17 compensated RNs for each and every missed rest break.” Dkt. 4 at 49. What MultiCare  
18 fails to recognize is that it appears the Arbitrator disagrees with MultiCare on what  
19 constitutes a missed break. In other words, the Arbitrator has the power to interpret the  
20 term “missed break” within the parties’ agreements when considering a compensatory  
21 remedy.

1       Similarly, the Arbitrator may fashion appropriate prospective relief to resolve the  
2 admitted deficiencies of the buddy system. For example, the Arbitrator can rely on the  
3 parties' mutual interest in patient care and impose certain patient care ratios that may  
4 only be violated in exigent circumstances. While the Court is unable to locate the full  
5 CBA, it would seem that patient care and safety are either implied or express goals for  
6 both parties. Moreover, the term "exigent circumstances" is within the parties'  
7 agreement as is the condition that "patient needs will be met" on each break. Settlement  
8 at 1(a)(1). Thus, if a covering buddy nurse, who would be responsible for both his or her  
9 own patients and the breaking nurse's patients, was responsible for at most the specific  
10 maximum patient ratio during the break, the breaking nurse's time away from work  
11 would seem more likely to be an actual break.<sup>1</sup> Such a remedy would not specifically  
12 preclude use of the buddy system, but would limit such use to accomplish the expressed  
13 goals of the parties' agreement. In other words, the Arbitrator could probably award a  
14 policy defining the term "patient needs are met." Although these decisions are best left to  
15 the Arbitrator, the examples highlight the difference between interpretation of the  
16 governing agreements and development of an appropriate remedy between the mutual  
17 goals expressed in the agreements and positions adamantly defended during negotiations.  
18

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20       <sup>1</sup> For example, if the maximum patient ratio for a department is three per nurse, then a  
21 nurse with three current patients would be precluded from being a breaking buddy. On the other  
22 hand, if the buddy nurse was only assigned one patient and the nurse requiring a break was only  
assigned one patient, then the buddy nurse could accept the additional patient for the breaking  
nurse. This solution seems to resolve patient care concerns and provides a "true" break for the  
nurse.

1       Second, the Arbitrator concluded that MultiCare “shall staff, schedule, and assign  
2 a reserve or float nurse with the precise assignment of relieving other scheduled nurses  
3 for their authorized breaks.” Decision at 33. Similar to the buddy system, the Arbitrator  
4 stated that “MultiCare, according to testimony, was adamant [during settlement  
5 negotiations] that they would not agree to anything that would mandate increased  
6 staffing.” *Id.* at 7. The Court requested additional briefing on the interpretation of the  
7 term “increased staffing” because the record “does not adequately reflect what ‘increased  
8 staffing’ entails.” Dkt. 33 at 6. Based on the parties’ responses, the Court concludes that  
9 interpretation of the term is a matter for the Arbitrator. It is unclear whether this issue  
10 alone is sufficient to vacate the Award, but, because the Court is vacating the Award on  
11 the previous issue, the Court simply points out that additional interpretation would assist  
12 a reviewing Court in determining whether the remedy derives its essence from the  
13 parties’ agreements. In other words, additional consideration and discussion linking the  
14 remedy to terms of the contract may be helpful for future review.

15       In sum, the Court grants WSNA’s motion as to the Arbitrator sustaining the  
16 grievance and grants MultiCare’s motion vacating the Arbitrator’s remedies.

17 **D. Jurisdiction**

18       MultiCare argues that the Arbitrator improperly retained jurisdiction to “resolve  
19 any dispute arising from the implementation of [the] Decision or Award.” Decision at  
20 33. MultiCare, however, fails to cite any authority in support of its position. While it  
21 would seem unreasonable for an arbitrator to retain jurisdiction to resolve every dispute  
22 between two parties, it seems reasonable for this arbitrator to resolve any dispute

1 regarding the implementation of his decision. This conclusion seems especially  
2 appropriate when an arbitrator orders the parties to negotiate further. Regardless, the  
3 Court vacates the substantive provisions of the remedy, which the Arbitrator retained  
4 jurisdiction to resolve. Therefore, MultiCare's argument is moot.

5 **E. Public Policy**

6 "Judicial deference to an arbitrator's remedy is not required where a remedy  
7 violates an explicit, well-defined public policy." *Phoenix Newspapers*, 989 F.2d at 1083.  
8 "This exception applies where a public policy: (1) is explicit, (2) is well-defined and  
9 dominant, and (3) can be satisfactorily demonstrated by reference to laws and legal  
10 precedents, instead of looking only to general considerations of supposed public interest."  
11 *Id.* However, "courts should be reluctant to vacate arbitral awards on public policy  
12 grounds." *Arizona Elec. Power Co-op., Inc. v. Berkeley*, 59 F.3d 988, 992 (9th Cir. 1995)  
13 (citing *Misco*, 484 U.S. at 43).

14 In this case, MultiCare argues that the Arbitrator's remedy violates the public  
15 policy set forth in RCW 70.41.410 *et seq.* Dkt. 23 at 17. The statute and legislative  
16 history dictate that a hospital's staffing policy be developed through a joint process  
17 involving representatives of the nurses and hospital management. *See* RCW 70.41.410  
18 MultiCare's has failed to show that this is an explicit, well-defined, and dominant public  
19 policy. If anything, the statute promotes negotiating an appropriate staffing policy, which  
20 the Arbitrator encouraged in his remedy. Therefore, the Court denies MultiCare's motion  
21 on this issue.

#### IV. ORDER

2 Therefore, it is hereby **ORDERED** that WSNA's motion for summary judgment  
3 to confirm award (Dkt. 15) and MultiCare's motion for summary judgment to vacate  
4 award (Dkt. 29) are **GRANTED in part** and **DENIED in part** such that (1) the  
5 Arbitrator sustaining the grievance is **AFFIRMED**, (2) the Arbitrator's remedies are  
6 **VACATED**, (3) the issue of retaining jurisdiction is moot, and (4) the arbitrator's  
7 remedies did not violate public policy.

Dated this 16th day of November, 2016.

  
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BENJAMIN H. SETTLE  
United States District Judge